

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 10, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHEYANNE J.,

Plaintiff,

v.

KILOLO KIJAKAZI,
ACTING COMMISSIONER OF
SOCIAL SECURITY,¹

Defendant.

No. 1:20-cv-03238-SMJ

**ORDER GRANTING IN PART
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT AND
REMANDING FOR ADDITIONAL
PROCEEDINGS**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 13, 14. Attorney D. James Tree represents Cheyanne J. (Plaintiff); Special Assistant United States Attorney Katherine Watson represents the Commissioner of Social Security (Defendant). After reviewing the administrative record and the briefs filed by the parties, the Court grants in part Plaintiff's Motion for Summary Judgment, denies Defendant's Motion for Summary Judgment, and remands this

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. §
2 405(g).

3 4 JURISDICTION

5 Plaintiff filed an application for Supplemental Security Income on October 7,
6 2014, alleging disability since January 1, 2013 due to bipolar disorder, manic-
7 depressive, depression, anxiety, learning disability, and cutting. Tr. 75.² The
8 application was denied initially and upon reconsideration. Tr. 122-24, 128-397-103,
9 107-130. An Administrative Law Judge (ALJ) held a hearing on November 1, 2016,
10 Tr. 37-73, and issued an unfavorable decision on February 10, 2017, Tr. 16-31.
11 Plaintiff requested review of the ALJ's decision by the Appeals Council and the
12 Appeals Council denied the request for review on February 27, 2018. Tr. 1-5.
13 Plaintiff filed suit in this court and on December 4, 2018 the case was remanded on
14 the stipulated motion of the parties. Tr. 795-96.

15 The ALJ held a remand hearing on May 21, 2020, Tr. 732-59, and issued an
16 unfavorable decision on June 2, 2020. Tr. 606-35. Plaintiff requested review from
17 the Appeals Council and the Appeals Council denied the request for review on
18 October 17, 2020. Tr. 593-99. The ALJ's June 2020 decision is the final decision of
19 the Commissioner, which is appealable to the district court pursuant to 42 U.S.C. §
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27 ² The application was filed by Plaintiff's father, as Plaintiff was a minor at
28 the time. She has since turned 18.

1 405(g). Plaintiff filed this action for judicial review on December 16, 2020. ECF No.
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3 4 **STATEMENT OF FACTS**

5 Plaintiff was born in 2001 and was 13 years old when her application was
6 filed. Tr. 613. She turned 18 in 2019. *Id.* In 2013, she was living with her mother in
7 California and experienced significant mental health difficulties, leading to being
8 psychiatrically hospitalized three times for suicidal ideation. Tr. 350. In 2014, she
9 returned to Washington to live with her father and stepmother. Tr. 349. She received
10 mental health counseling and medication and was placed in special education for a
11 mathematics learning disability. Tr. 361-64, 524-28. She had some difficulties in
12 school with her grades and getting along with other students, and some problems at
13 home interacting with her siblings and parents. Tr. 379. In 2016, she became
14 pregnant but was able to continue in school throughout her pregnancy and returned
15 after giving birth. Tr. 957-60. By her second hearing in 2020, she testified that she
16 had not finished high school and had not been receiving treatment recently due to
17 being busy with her two children. Tr. 756.

23 **STANDARD OF REVIEW**

24 The ALJ is responsible for determining credibility, resolving conflicts in
25 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
26 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with
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1 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,
2 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only
3 if it is not supported by substantial evidence or if it is based on legal error. *Tackett*
4 *v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as
5 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put
6 another way, substantial evidence is such relevant evidence as a reasonable mind
7 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S.
8 389, 401 (1971). If the evidence is susceptible to more than one rational
9 interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*,
10 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595,
11 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or
12 if conflicting evidence supports a finding of either disability or non-disability, the
13 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230
14 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be
15 set aside if the proper legal standards were not applied in weighing the evidence and
16 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d
17 432, 433 (9th Cir. 1988).

24 SEQUENTIAL EVALUATION PROCESS

25 The Social Security Act provides that a child under 18 is "disabled" for
26 purposes of SSI eligibility if she "has a medically determinable physical or mental
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1 impairment, which results in marked and severe functional limitations, and which
2 can be expected to result in death or which has lasted or can be expected to last for
3 a continuous period of not less than 12 months.” 42 U.S.C. § 1382c(a)(3)(C)(i). The
4 Commissioner follows a three-step sequential process in determining childhood
5 disability: (1) whether the child is engaged in substantial gainful activity; (2) if not,
6 whether the child has a medically determinable severe impairment; (3) and, if so,
7 whether the child’s severe impairment meets, medically equals, or functionally
8 equals the severity of a set of criteria for an impairment listed in 20 C.F.R. Part 404,
9 Subpart P, Appendix 1. 20 C.F.R. § 416.924.
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13 If the Commissioner determines at step three that the claimant has an
14 impairment or combination of impairments that meets or medically equals the
15 severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix
16 1, the analysis ends there. If not, the Commissioner decides whether the child’s
17 impairments result in limitations that functionally equal a listing. 20 C.F.R. §
18 416.926a(a). In determining whether an impairment or combination of impairments
19 functionally equal a listing, the Commissioner assesses the claimant’s functioning
20 in terms of six domains: (1) acquiring and using information; (2) attending and
21 completing tasks; (3) interacting and relating with others; (4) moving about and
22 manipulating objects; (5) caring for yourself; and (6) health and physical well-being.
23 20 C.F.R. § 416.926a(b)(1).
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1 The Commissioner has established a five-step sequential evaluation process
2 for determining whether an adult claimant is disabled: (1) whether the person is
3 engaged in substantial gainful activity; (2) whether the person has a medically
4 determinable severe impairment; (3) whether any of the impairments meet or equal
5 a listed impairment; (4) whether the person is capable of performing their past
6 relevant work given their residual functional capacity; and (5) whether they are
7 capable of performing any other work. 20 C.F.R. § 416.920(a); *Bowen v. Yuckert*,
8 482 U.S. 137, 140-142 (1987).
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12 In steps one through four, the claimant bears the burden of establishing a
13 prima facie case of disability. *Tackett*, 180 F.3d at 1098-1099. This burden is met
14 once a claimant establishes that a physical or mental impairment prevents the
15 claimant from engaging in past relevant work. 20 C.F.R. § 416.920(a)(4). If a
16 claimant cannot perform past relevant work, the ALJ proceeds to step five, and the
17 burden shifts to the Commissioner to show (1) the claimant can make an adjustment
18 to other work; and (2) the claimant can perform specific jobs that exist in the national
19 economy. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-1194
20 (9th Cir. 2004). If a claimant cannot make an adjustment to other work in the national
21 economy, the claimant will be found disabled. 20 C.F.R. § 416.920(a)(4)(v).
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ADMINISTRATIVE FINDINGS

On June 2, 2020, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act, neither under the child nor adult standard. Tr. 606-35.

Under the child standard for the period prior to Plaintiff reaching age 18, at step one the ALJ found Plaintiff had not engaged in substantial gainful activity since the application date. Tr. 613.

At step two, the ALJ determined Plaintiff had the following severe impairments: specific learning disorder (mathematics), affective disorder (bipolar disorder and major depressive disorder), anxiety disorder, eating disorder, posttraumatic stress disorder, and attention deficit hyperactivity disorder. *Id.*

At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 614. The ALJ additionally found that Plaintiff did not have an impairment or combination of impairments that functionally equaled the listings, finding she had no limitation in the domains of moving about and manipulating objects or health and physical well-being, and that she had a less than marked limitation in acquiring and using information, attending and completing tasks, interacting and relating with others, and in caring for herself. Tr. 631.

1 The ALJ thus concluded Plaintiff was not disabled prior to attaining age 18.

2 *Id.*

3 Under the adult standard, the ALJ found Plaintiff had not developed any new
4 impairments, and that her impairments continued to be severe. Tr. 631-32.

5 At step three, the ALJ found Plaintiff did not have an impairment or
6 combination of impairments that met or medically equaled a listed impairment. Tr.
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8 632.

9 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found
10 that since attaining age 18 she had the capacity to perform a full range of work at all
11 exertional levels with the following non-exertional limitations:

12 She can follow and engage in simple, routine tasks with brief and
13 superficial interaction with the public or coworkers.

14 Tr. 633.

15 At step four, the ALJ found Plaintiff had no past relevant work. *Id.*

16 At step five the ALJ found that, considering Plaintiff's age, education, work
17 experience, and residual functional capacity, Plaintiff could perform jobs that existed
18 in significant numbers in the national economy, specifically identifying the
19 representative occupations of hand packager, salvage laborer, and small products
20 assembler. Tr. 633-34.
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1 The ALJ thus concluded Plaintiff was not under a disability within the
2 meaning of the Social Security Act at any time from the date she turned 18 through
3 the date of the decision. Tr. 634.
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5 ISSUES

6 The question presented is whether substantial evidence supports the ALJ's
7 decision denying benefits and, if so, whether that decision is based on proper legal
8 standards.
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10 Plaintiff contends the Commissioner erred by (1) not fully and fairly
11 developing the record; (2) not properly considering new and material evidence
12 submitted to the Appeals Council; (3) not properly assessing the opinion evidence;
13 and (4) failing to properly assess Plaintiff's testimony.
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16 DISCUSSION

17 I. Child Disability Claim

18 The Court finds the ALJ did not err in denying Plaintiff's claim for
19 supplemental security income for the period prior to her reaching age 18.
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21 A. Plaintiff's Subjective Statements

22 Plaintiff contends the ALJ erred by improperly rejecting her subjective
23 complaints. ECF No. 13 at 18-21.
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26 It is the province of the ALJ to make determinations regarding a claimant's
27 subjective statements. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).
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1 However, the ALJ's findings must be supported by specific, cogent reasons. *Rashad*
2 *v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the claimant produces
3 medical evidence of an underlying medical impairment, the ALJ may not discredit
4 testimony as to the severity of an impairment merely because it is unsupported by
5 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Absent
6 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's
7 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273,
8 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "General
9 findings are insufficient: rather the ALJ must identify what testimony is not credible
10 and what evidence undermines the claimant's complaints." *Lester*, 81 F.3d at 834;
11 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

12 The ALJ concluded Plaintiff's medically determinable impairments could
13 reasonably be expected to cause some of the alleged symptoms; however, Plaintiff's
14 statements concerning the intensity, persistence and limiting effects of those
15 symptoms were not entirely consistent with the medical evidence and other evidence
16 in the record. Tr. 619. The ALJ found Plaintiff's complaints were not supported by
17 the objective evidence of record, the well-considered medical opinions, or the
18 consistency of her reported and demonstrated functional ability. Tr. 619.
19 Specifically, the ALJ noted the largely normal finding on mental status exams, little
20 evidence of on-going self-harm behaviors during the relevant period, some non-
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1 compliance with medication, inconsistent reports regarding medication side effects,
2 and school records indicating her poor grades were somewhat connected to volition
3 and outside stressors rather than her medical conditions. Tr. 619-25.
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5 Plaintiff argues the ALJ's analysis omits evidence that is supportive of her
6 claim, ignoring the context of many of the stated factors. ECF No. 13 at 18-21.
7 Defendant argues the ALJ reasonably considered the unremarkable objective
8 evidence, Plaintiff's treatment history, improvement in some areas of academics,
9 and the contribution of non-disability stressors. ECF No. 14 at 8-12.
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12 The Court finds the ALJ did not err. The ALJ reasonably considered
13 Plaintiff's treatment history and the improvement she exhibited with medication and
14 counseling. He also reasonably considered non-disability factors that contributed to
15 Plaintiff's poor school performance, such as not wanting to go to school because of
16 other children bullying her and missing school when she was pregnant. These were
17 reasonable factors for the ALJ to consider and his conclusions are supported by
18 substantial evidence. Social Security Ruling 16-3p.
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22 Although it cannot serve as the sole ground for rejecting a claimant's symptom
23 statements, objective medical evidence is a "relevant factor in determining the
24 severity of the claimant's pain and its disabling effects." *Rollins v. Massanari*, 261
25 F.3d 853, 857 (9th Cir. 2001). The ALJ noted the largely normal mental status exams
26 throughout Plaintiff's counseling records. Tr. 619-21. While Plaintiff offers an
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1 alternative interpretation of the records, the ALJ's interpretation was reasonable, and
2 in such circumstances the court may not substitute its judgment for that of the
3 Commissioner. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007).
4

5 Plaintiff additionally argues the ALJ erred in failing to weigh the testimony
6 and evidence supplied by Plaintiff's father. ECF No. 13 at 17-18. However, the ALJ
7 included Mr. Jones' testimony in the summary of the subjective reports, and
8 indicated that the reasons offered for not accepting Plaintiff's subjective reports also
9 applied to her father's allegations. Tr. 618-19. Furthermore, "an ALJ's failure to
10 comment upon lay witness testimony is harmless where the same evidence that the
11 ALJ referred to in discrediting the claimant's claims also discredits the lay witness's
12 claims." *Molina v. Astrue*, 674 F.3d 1104, 1122 (9th Cir. 2012). The ALJ did not err
13 in his treatment of Mr. Jones' testimony.
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17 **B. Opinion Evidence**

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19 Plaintiff argues the ALJ erred in discounting the opinions from treating
20 physician Dr. Petzinger, examining psychologist Dr. Schultz, and two of Plaintiff's
21 teachers. ECF No. 13 at 7-18.
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23 **1. Medical Opinions**

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25 When a treating or examining physician's opinion is contradicted by another
26 physician, the ALJ may reject the opinion by offering "specific and legitimate
27 reasons" based on substantial evidence. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th
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1 Cir. 1995); *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995). The specific and
2 legitimate standard can be met by the ALJ setting out a detailed and thorough
3 summary of the facts and conflicting clinical evidence, stating their interpretation
4 thereof, and making findings. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.
5 1989).
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8 **a. Dr. Petzinger**

9 Plaintiff's medication prescriber, Dr. George Petzinger, completed a medical
10 source statement in August 2015. Tr. 403-04. He noted diagnoses of mood disorder
11 and eating disorder, with symptoms including Plaintiff was depressed without
12 medication, was tired much of the time, did not eat when hungry, and had poor
13 exercise tolerance. Tr. 403. In response to a question about whether she would be
14 likely to miss work from a full-time job, Dr. Petzinger replied she would miss
15 multiple days per month as she was a student in high school and was planning on
16 attending class and playing basketball. Tr. 404.
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18 The ALJ gave this opinion little weight, noting it was unsupported by a review
19 of the education record and was based on a brief treatment history, and was
20 inconsistent with later treatment records with largely normal mental status exams.
21 Tr. 629. The ALJ further reasoned that the missed days question was inconsistent
22 with the record, which did not show problems with absenteeism and that the doctor's
23 explanation for the missed days did not support the opinion. *Id.*
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1 Plaintiff argues the ALJ's reasoning was not supported by the record, which
2 indicated truancy, significant absenteeism in the updated school records, and
3 ongoing issues of self-harm and difficulties with eating. ECF No. 13 at 15-17.
4 Defendant argues the ALJ reasonably found the opinion to be inadequately
5 supported and inconsistent with the doctor's own treatment notes. ECF No. 14 at 15-
6 16.
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9 The Court finds no error. The ALJ's consideration of Dr. Petzinger's
10 treatment records, including the largely normal mental status exams, is substantial
11 evidence in support of his conclusions. The Court further notes that Dr. Petzinger
12 did not actually assess any limitations in Plaintiff's functional abilities in any of the
13 six childhood domains, and that the opinion that she would miss work was due to
14 her attending school and other activities. Tr. 403-04.
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17 **b. Dr. Schultz**
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19 Plaintiff attended a consultative psychological exam with Dr. Schultz in
20 January 2015. Tr. 379-82. Dr. Schultz diagnosed unspecified bipolar disorder, ruled
21 out learning disorder, and noted that Plaintiff was struggling in school with
22 aggressive behaviors and poor grades to the point where her current level of
23 functioning was poor. Tr. 381-82. Dr. Schultz opined Plaintiff's bipolar diagnosis
24 would impact her functioning throughout her life, and combined with her learning
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1 disorder, her prognosis was guarded as it was uncertain how well she would do in
2 the future. Tr. 382.

3 The ALJ gave this opinion little weight, noting it contained no evaluation of
4 any of the domains specifically and was rife with uncertain, vague, ambiguous
5 language. Tr. 629. The ALJ further found the opinion unsupported by a review of
6 the updated medical and education records and found it inconsistent with the records
7 that showed improvement and a lack of serious limitations in Plaintiff's mental
8 functioning. *Id.*

9 Plaintiff argues the ALJ erred, as the report indicated Plaintiff had difficulties
10 in multiple domains, and that the rejection was otherwise conclusory and lacking in
11 citations to any evidence to support the conclusions. ECF No. 13 at 13-14. Plaintiff
12 further asserts that the record does not support the ALJ's conclusion that she had
13 improved, noting evidence of ongoing difficulties in school, getting into fights,
14 having problems with spikes of anger, and being passively suicidal. *Id.* at 14-15.
15 Defendant argues the ALJ reasonably gave this opinion little weight due to being too
16 vague to be useful, and reasonably found it to be unsupported and inconsistent with
17 the longitudinal record. ECF No. 14 at 14-15.

18 The Court finds the ALJ did not err. The ALJ's interpretation of the report as
19 lacking in specific limitations or comments on Plaintiff's functioning in the relevant
20 domains is a reasonable interpretation. The ALJ also reasonably considered the
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1 remaining records in finding Dr. Schultz’s opinion unsupported by the longitudinal
2 record.

3 2. **Teacher Opinions**

4 An ALJ may discount the opinion of an “other source,” such as a teacher, if
5 they provide “reasons germane to each witness for doing so.” *Molina v. Astrue*, 674
6 F.3d 1104, 1111 (9th Cir. 2012).
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8 a. **Rob Tyrrell**

9 Plaintiff’s case manager, Rob Tyrrell, completed a statement regarding her
10 functioning in the child domains, opining Plaintiff had marked limitations in
11 acquiring and using information, attending and completing tasks, and in health and
12 physical well-being, and no limitation in the other domains. Tr. 233-35. He noted
13 her below grade level functioning in math, reading, and writing, and that she met
14 social services criteria for math. Tr. 233. He additionally noted that her medications
15 were working well but she was tired. Tr. 235.
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17 The ALJ gave this opinion little weight, reasoning that Mr. Tyrrell was not an
18 authorized medical source to provide a medical opinion, and that the records
19 reflected some limitations, but not marked, as she remained in general classes for all
20 subjects other than math and that there was evidence that her bad grades were related
21 to not turning in assignments rather than her learning disorder. Tr. 630. The ALJ
22 further reasoned that the record reflected no limits in physical health and well-being
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1 and Plaintiff was not noted to be tired or drowsy and her medications were working
2 to control her mental health symptoms. *Id.*

3 Plaintiff argues a lay witness is still a relevant source of information despite
4 not being an acceptable medical source, Plaintiff had multiple academic issues apart
5 from simply not turning in assignments, and that she demonstrated ongoing
6 difficulty keeping herself safe. ECF No. 13 at 12-13. Plaintiff additionally argues
7 that the record contains notations of medication side effects and drowsiness. *Id.*
8 Defendant argues the ALJ's rationale is valid and supported by substantial evidence,
9 including evidence of average to low-average abilities in all academic areas other
10 than math and that her other social and attendance difficulties documented in the
11 record were unrelated to her learning disability or other medical issues. ECF No. 14
12 at 16-17.

13 The Court finds the ALJ's rationale satisfies the germane standard for a non-
14 acceptable source. The ALJ's interpretation of the record as lacking evidence of
15 serious cognitive functional impairment is reasonable, as is the ALJ's finding that
16 the record contains no evidence of marked limitations in health and physical well-
17 being. While the ALJ was incorrect to disregard the opinion on the basis of Mr.
18 Tyrrell not being a medical source, the ALJ offered other sufficient germane reasons
19 for discounting the extent of the assessed limitations, so any such error was harmless.
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b. Rick Clives

Plaintiff's special education resource teacher, Rick Clives, completed an opinion regarding Plaintiff's functioning in the domains in May 2015. Tr. 400-02. He noted she had a marked impairment in acquiring and using information and in attending and completing tasks with respect to her mathematics learning disorder, and that she had a marked impairment in caring for herself, based on her emotional state and history of cutting herself. 400-01. He noted she was at grade level for all subjects other than math, was not taking advantage of extra services provided to her, was cooperative as long as she agreed with requests, and had some problems with friends but nothing serious. Tr. 402.

The ALJ gave this opinion little weight, noting Mr. Clives had only known Plaintiff for nine months and did not have personal knowledge of her emotional state, and that the opinion was inconsistent with the records indicating that her cutting behaviors had not continued for the most part. Tr. 630. The ALJ further found that other than math, the record did not support that Plaintiff had significant educational limitations, and her difficulties with math alone did not warrant marked limitations overall in any domain. Tr. 631.

Plaintiff argues that Mr. Clives did have knowledge of Plaintiff's emotional state, given his knowledge of her past and present cutting behavior, and that a nine-month relationship was more extensive than some of the sources the ALJ assigned

1 greater weight to, who had never met or examined Plaintiff. ECF No. 13 at 8-10.
2 Plaintiff further argues Mr. Clives provided pertinent information regarding marked
3 limitations in academic functioning and the record supported greater problems in
4 school than just math. *Id.* at 11-12. Defendant argues the ALJ reasonably considered
5 the source's specialty and familiarity with the record and that the record did not
6 support the extent of his assessed limitations. ECF No. 14 at 17-18.
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9 The Court finds the ALJ did not err. Support from the record and a source's
10 familiarity with other evidence are germane factors for the ALJ to have considered.
11 Plaintiff argues for an alternative interpretation of the record, but the ALJ's
12 interpretation is supported by substantial evidence.
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14 **C. Development of the Record and New Evidence**

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16 Plaintiff argues the ALJ erred in his development of the record in multiple
17 ways, including failing to hold the record open for the submission of updated school
18 records and in failing to have the medical expert review those records, thus rendering
19 the medical expert's testimony incomplete. ECF No. 13 at 4-5. Plaintiff further
20 asserts the Appeals Council erred by not properly considering the new evidence on
21 appeal and in failing to remand the claim to the ALJ. *Id.* at 6-7. Defendant argues
22 the ALJ made reasonable efforts to ensure the record was complete and that a
23 qualified doctor made a case evaluation, pursuant to Acquiescence Ruling 04-1(9)
24 and the remand order, noting Plaintiff's counsel made no requests that the hearing
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1 be delayed or the record be left open. ECF No. 14 at 2-3. Defendant further asserts
2 that even considering the additional evidence on the merits, Plaintiff does not
3 establish harm as the new evidence did not provide any further insight into Plaintiff's
4 condition. *Id.* at 5-6, 20-21.

6 The Court finds no error at the ALJ or Appeals Council levels, as the new
7 evidence does not render the ALJ's decision unsupported by substantial evidence.
8 *Brewes v. Comm'r of Soc. Sec. Admin.*, 682 F.3d 1157, 1163 (9th Cir. 2012). The
9 additional school records document a few behavioral incidents, such as Plaintiff
10 using profanity or being disruptive in class and receiving detention, and on one
11 occasion getting into a fight with another girl. Tr. 686-87. But these records do not
12 change the balance of evidence, as such occasional behavioral issues were already
13 documented in the file. Tr. 266, 504, 510, 946. The new records also support the
14 ALJ's decision in that the 2017 IEP meetings indicated Plaintiff was very
15 conscientious and motivated, tried hard, and was participating in class, despite her
16 troubles in math. Tr. 643, 664. No difficulties in other areas of schooling were
17 documented, other than concerns over absenteeism. Tr. 646, 665. However, the
18 record already indicated that Plaintiff's grades were suffering due to absenteeism
19 related to her own and her son's needs, and not due to her mental health or her
20 learning disability. Tr. 962. Therefore, the Court finds no harmful error in the ALJ
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1 not obtaining this evidence or the Appeals Council failing to remand for evaluation
2 of this evidence.

3 **II. Adult Disability Claim**

4
5 Plaintiff asserts the ALJ erred in failing to obtain a consultative exam to
6 develop the record of her adult functioning. ECF No. 13 at 5-6. Defendant argues
7 the decision to order a consultative exam is discretionary and the ALJ appropriately
8 determined the record was sufficient for decision, by reasonably inferring that the
9 lack of treatment or any evidence of significant deterioration in functioning allowed
10 the ALJ to conclude Plaintiff was capable of simple routine work with limited social
11 interaction. ECF No. 14 at 7-8.

12
13 While the claimant bears the burden of demonstrating her entitlement to
14 disability, “Social Security proceedings are inquisitorial rather than adversarial. It is
15 the ALJ’s duty to investigate the facts and develop the arguments both for and
16 against granting benefits.” *Sims v. Apfel*, 530 U.S. 103, 110-11 (2000). The
17 obligation to develop the record “is triggered only when there is ambiguous evidence
18 or when the record is inadequate to allow for proper evaluation of the evidence.”
19 *Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001).

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21 The Court finds the ALJ failed to fulfill his duty to develop the record, as the
22 record contains no evidence of Plaintiff’s condition as an adult. Other than a single
23 record of lab results, there are no records after the summer of 2018, which was a
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1 year prior to Plaintiff turning 18. Tr. 967-73. The ALJ noted that there was little
2 additional evidence for the adult stage of adjudication and cited no records in support
3 of the RFC determination. Tr. 633. The medical expert, whose testimony the ALJ
4 assigned significant weight to, testified that the best he could do was hypothesize as
5 to Plaintiff's adult residual functional capacity, as the record was stale by a number
6 of years and there simply was no data to establish anything for the adult phase. Tr.
7 744-45. *See Alderson v. Saul*, No. 20-35638, 2021 WL 2624128, at *1 (9th Cir. June
8 25, 2021) (unpublished) (ordering remand for a consultative exam when the records
9 contained limited counseling records and the medical expert recommended
10 obtaining an updated exam due to the most recent evidence being more than a year
11 old).

12 Therefore, the adult disability findings are not supported by substantial
13 evidence. Due to the lack of any records, the Court finds the ALJ's duty to develop
14 the record was triggered based on the record being inadequate to allow for proper
15 evaluation. On remand the ALJ shall order a consultative exam to assess Plaintiff's
16 functioning as an adult.³

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26 ³ The Court also notes Plaintiff testified at the May 2020 hearing that she had just
27 resumed mental health treatment. Tr. 755. The ALJ should also ensure that the
28 record is developed with any additional treatment records that may exist.

CONCLUSION

The ALJ's decision with respect to Plaintiff's eligibility for benefits as a child is free from error and supported by substantial evidence. It is therefore affirmed.

The ALJ's decision with respect to Plaintiff's eligibility for benefits as an adult is not supported by substantial evidence. On remand, the ALJ shall obtain a consultative exam, reevaluate the five-step sequential process, and take into consideration any other evidence or testimony relevant to Plaintiff's disability claim.

Accordingly, **IT IS ORDERED:**

- 1.** Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is **GRANTED IN PART**.
- 2.** Defendant's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.
- 3.** The matter is **REMANDED** to the Commissioner for additional proceedings consistent with this Order.
- 4.** An application for attorney fees may be filed by separate motion **within thirty (30) days** of this Order.
- 5.** The Clerk's Office is directed to **ENTER JUDGMENT** and **CLOSE** this file.

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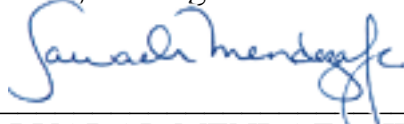
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IT IS SO ORDERED. The Clerk's Office shall enter this Order and provide copies to all counsel.

DATED this 10th day of August 2022.

A handwritten signature in blue ink, appearing to read "Salvador Mendoza, Jr.", written over a horizontal line.

SALVADOR MENDOZA, JR.
United States District Judge